

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

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 4)
 5 In Re: Pork Antitrust) File No. 18-cv-1776
 6 Litigation) (JRT/HB)
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8)
 9 Commonwealth of Puerto Rico,)
 10 Plaintiff,)
 11 v.)
 12 Agri Stats, Inc., et al,)
 13 Defendants.)
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25 **Foods, LLC, and**
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P R O C E E D I N G S

IN OPEN COURT

THE COURT: Good afternoon, everyone. Thank you for your patience. We had a couple of technical difficulties we wanted to make sure we ironed out first before we brought you all into the main session.

This is the United States District Court for the District of Minnesota. We are gathered by Zoom today for a case management conference in the matter of In re Pork Antitrust Litigation. This is Matter No. 18-cv-1776.

We have a court reporter on with us this afternoon, and we have a recording running through the Zoom platform as well. You all have done this drill numerous times, so I'm not going to repeat my usual admonitions about the various things that will help our court reporter get a good transcript for us this afternoon.

What I will do, though, is take the usual approach to calling the roll because that does make it easier for our court reporter. I will call out the names of the people that at least are on my list of people I understood were going to be attending.

There are a number of telephone numbers that I can't assign names to, so after I refer to each group of parties, I will ask whether there is anybody else who would like their appearance noted on behalf of that party. If

1 there are people on the line just to listen and they don't
2 feel the need to have their appearance noted, that's fine,
3 too. I don't need the name of everybody on the line. I
4 just want the names of people who want it on the record that
5 they were in attendance at this case management conference.

6 So let's start with counsel for the Direct
7 Purchaser Plaintiffs. Bobby Pouya.

8 MR. POUYA: Hello, Your Honor. Good afternoon.

9 THE COURT: Good afternoon.

10 Joseph Bruckner.

11 MR. BRUCKNER: I'm here, Your Honor. Good
12 afternoon.

13 THE COURT: Brian Clark.

14 MR. CLARK: Good afternoon.

15 THE COURT: Joseph Bourne.

16 MR. BOURNE: Good afternoon, Your Honor.

17 THE COURT: Arielle Wagner.

18 MS. WAGNER: Good afternoon.

19 THE COURT: Is there anybody else who wants their
20 appearance noted for the Direct Purchaser Plaintiffs?

21 MR. PEARSON: Good afternoon, Your Honor.

22 Clifford Pearson for the DPPs.

23 THE COURT: Good afternoon.

24 Anyone else that --

25 MR. NOLAN: Good afternoon, Your Honor. I'm sorry

1 -- Thomas Nolan on behalf of the Direct Purchasers.

2 THE COURT: All right. Hold on a moment.

3 Anyone else for the Direct Purchaser Plaintiffs?

4 No. All right.

5 Turning to the Consumer Indirect Purchaser

6 Plaintiffs. Shana Scarlett.

7 MS. SCARLETT: Good afternoon, Your Honor.

8 THE COURT: And Michelle Looby.

9 MS. LOOBY: Good afternoon, Your Honor.

10 THE COURT: Anybody else on for the Consumer

11 Indirect Purchaser Plaintiffs? No. All right.

12 Moving to the Commercial and Institutional

13 Indirect Purchaser Plaintiffs. Blaine Finley.

14 MR. FINLEY: Good afternoon, Your Honor.

15 THE COURT: David McMullan.

16 MR. McMULLAN: Good afternoon, Your Honor.

17 THE COURT: Anyone else for the Commercial and

18 Institutional Indirect Purchaser Plaintiffs?

19 MR. CARTER: Good afternoon, Your Honor. Anthony

20 Carter.

21 THE COURT: Got it.

22 Moving on to the Commonwealth of Puerto Rico.

23 Kyle Bates.

24 MR. BATES: Good afternoon, Your Honor.

25 THE COURT: And, Mr. Bates, is anyone else going

1 to join you this afternoon on behalf of Puerto Rico?

2 MR. BATES: No, Your Honor.

3 THE COURT: And on behalf of the Winn-Dixie stores
4 and Bi-Lo Holdings. Patrick Ahern.

5 MR. AHERN: Good afternoon, Your Honor.

6 THE COURT: Is anyone else on for those two
7 plaintiffs?

8 MR. AHERN: No, Your Honor.

9 THE COURT: Okay. I think that covers the
10 plaintiffs. Let's turn now to the defendants. Clemens Food
11 Group.

12 MS. WILLIAMS: Good afternoon, Your Honor. This
13 is Davida Williams.

14 THE COURT: And it looks like Vanessa Barsanti is
15 on as well. Is that right?

16 MS. BARSANTI: Good afternoon, Your Honor.

17 THE COURT: And Dan Laytin.

18 MR. LAYTIN: Good afternoon, Your Honor.

19 THE COURT: Anyone else for the Clemens Food
20 Group?

21 MS. WILLIAMS: No, Your Honor.

22 THE COURT: Turning to Triumph Foods. Christopher
23 Smith.

24 MR. SMITH: Good afternoon, Your Honor.

25 THE COURT: Anyone else for Triumph Foods?

1 MR. SMITH: No, Your Honor.

2 THE COURT: For Agri Stats, Inc. William Monts.

3 MR. MONTS: Good afternoon, Your Honor.

4 THE COURT: Liam Phibbs.

5 MR. PHIBBS: Good afternoon, Your Honor.

6 THE COURT: Anyone else for Agri Stats?

7 MR. MONTS: No, Your Honor.

8 THE COURT: For JBS USA. Sami Rashid.

9 MR. RASHID: Good afternoon, Your Honor.

10 THE COURT: Don Heeman.

11 MR. HEEMAN: Good afternoon, Your Honor.

12 THE COURT: Is there anyone else on for JBS USA?

13 MR. RASHID: Just the two of us, Your Honor.

14 THE COURT: Seaboard Foods. Peter Schwingler.

15 MR. SCHWINGLER: Good afternoon, Your Honor.

16 THE COURT: Anyone else for Seaboard Foods?

17 MR. SCHWINGLER: My colleague, Zach Hemingway, is
18 listening in as well.

19 THE COURT: All right. For Hormel Foods. Craig
20 Coleman.

21 MR. COLEMAN: Here, Your Honor.

22 THE COURT: Anyone else for Hormel?

23 MR. COLEMAN: No, Your Honor.

24 THE COURT: Smithfield Foods. Brian Robison.

25 MR. ROBISON: Yes. Good afternoon, Your Honor.

1 THE COURT: All right. So, Mr. Robison, are you
2 on both by computer and by phone then?

3 MR. ROBISON: No, just by iPad. I'm not sure how
4 it's appearing.

5 THE COURT: Okay. There was a telephone icon that
6 lit up at the same time you spoke, and I wasn't sure if
7 maybe that was you as well.

8 MR. ROBISON: That may be John Cotter who is also,
9 I think, on for Smithfield.

10 MR. COTTER: Good afternoon, Your Honor.

11 THE COURT: Good afternoon.

12 All right. Anyone else for Smithfield?

13 MR. ROBISON: No, Your Honor.

14 THE COURT: And moving on to Tyson Foods or the
15 Tyson defendants. Tiffany Rider.

16 MS. RIDER ROHRBAUGH: Yes, Your Honor. Good
17 afternoon.

18 THE COURT: Good afternoon.

19 And Jared Taylor.

20 MR. TAYLOR: Good afternoon, Your Honor.

21 THE COURT: Anyone else for the Tyson defendants?

22 MR. GRAHAM: David Graham, Your Honor.

23 THE COURT: All right. Is there anyone who wants
24 their appearance noted that has not yet identified
25 themselves on the record?

1 I just admitted somebody else from the waiting
2 room, but I'm assuming that anybody who hasn't named
3 themselves is fine just participating as a listener.

4 All right. Then we have several items on the
5 agenda. One thing I did want to clarify, and to the extent
6 it wasn't clear I'll take responsibility for that, but even
7 though certainly a significant purpose of these periodic
8 conferences is to address disputes -- whether they are
9 disputes that are ripe for resolution or just disputes that
10 are bubbling up and the parties want to air them with the
11 Court -- I don't intend for these conferences to be only
12 about that. They are useful to me as well just to provide a
13 periodic update about where you're at and where you had
14 hoped to be by now and to identify things that, even though
15 they couldn't even remotely be called disputes, are things
16 that you want to get on my radar.

17 So I recognize there was some difference of
18 viewpoint between plaintiffs' counsel and defendants'
19 counsel about whether it made any sense to have this meeting
20 at this point. And if there was confusion about what the
21 mission for these periodic gatherings is, I'll take
22 responsibility for that.

23 That being said, I am absolutely willing to cancel
24 a case management conference if there is no purpose to be
25 served. But it doesn't necessarily answer that question

1 that there is no dispute that is yet ripe for presentation
2 to me for resolution.

3 So hopefully that will clarify some things going
4 forward both about why we have these gatherings, as well as
5 what you would consider including in update letters, which
6 just don't have to be about disputes. They can even be
7 update letters about how much amazing work you have done to
8 get discovery out the door in the time since we last met.
9 And I, actually, kind of enjoy the good newsletters as well.

10 So turning to the agenda items, there are three
11 that the plaintiffs had suggested. One had to do with the
12 proposed validation protocol that had been teed up, along
13 with some other things relating to the ESI protocol back in
14 November.

15 Another was about structured data, particularly
16 the kind of where the parties were at in negotiating about
17 structured data and the timing of potential productions.

18 And then generally the plaintiffs have proposed
19 also just providing an update about where you're at on meet
20 and confers with regard to other issues.

21 With respect to the proposed validation protocol,
22 obviously, I recognize that that was a piece that was a part
23 of a package that was presented in November, and it's a
24 piece that's left unresolved.

25 To the extent the plaintiffs' short question is do

1 I have questions about the proposed protocol itself, the
2 answer is no, I don't have questions about the proposed
3 protocol. I understand the protocol and if I hadn't, I'd
4 have asked those questions at the time it was presented.

5 But my inclination following that discussion we
6 had in November was at the time, and continues to be,
7 against inserting myself preemptively into how ESI processes
8 will be validated.

9 And particularly I noted at the time the
10 defendants' point that it was early going and potentially
11 premature to have the discussion before you'd even really
12 fleshed out what methodologies would be used -- whether
13 you're going with TAR, whether you're going to search terms,
14 whether you're going with some combination of processes.

15 I know that some courts have gone ahead and
16 imposed validation protocols from the get-go. I tend to be
17 of the camp, at least as a baseline, of the courts that have
18 chosen not to do that at least until there was more reason
19 to believe that there was a problem that needed to be fixed
20 or that you were on the road to a problem that if something
21 didn't happen it was going to need to be fixed.

22 And I took at their word the defendants'
23 representations at the time that with or without a
24 court-ordered validation protocol their watchword was going
25 to be transparency with respect to how they would validate

1 their processes.

2 But that being said, rather than enter an order at
3 that time just saying nope, not gonna, for better or for
4 worse, I decided to just let it ride and let your
5 conversations about process continue to take shape and see
6 whether in the intervening time things had developed that
7 suggested a reconsideration -- a preemptive strike when it
8 comes to validation or whether the defendants'
9 protestations, if you will, against the need for court
10 action on that subject so far had proved well-founded.

11 So if that left you in limbo and particularly if
12 it inhibited your progress in these areas or stilted your
13 discussions, then that's on me. Speaking of transparency, I
14 should have perhaps been more transparent about how I was
15 going to view that and how I was going to let that ride.
16 But that's where I'm at with it at the moment.

17 So plaintiffs having raised it as an agenda item I
18 think is a good opportunity for you to bring me up to date
19 on any developments that you think, from either side, ought
20 to weigh in favor either of revisiting -- yep, it makes good
21 sense to do something proactive with regard to validation --
22 or to continue to stay out of that until it appears that
23 there's actually something that needs to be fixed that went
24 wrong and needs to be addressed.

25 So that's by way of introduction. Let me ask who

1 on behalf of plaintiffs wanted to speak to that first agenda
2 item?

3 MS. WAGNER: I think that's me, Arielle Wagner for
4 DPP.

5 So we've had some conversation with defendants
6 about TAR, but, frankly, we haven't gotten to the validation
7 part of the discussion. So I think we can continue to have
8 those discussions with defendants based on your guidance
9 today.

10 THE COURT: Let me ask if defendants want to put a
11 different spin on that?

12 MR. TAYLOR: Your Honor, I think this is one of
13 those instances you mentioned earlier where we can happily
14 report that the parties are doing amazing work to get
15 productions out the door. We've made substantial completion
16 of production of our priority custodians. And so far there
17 are really no disputes in particular with the respect to the
18 validation protocols. So we don't have any specific updates
19 or requests for the Court at this time.

20 THE COURT: Okay. Well, unless the parties would
21 ask for something different, my intention would be to
22 continue to let that ride. I've got all the information I
23 need. I understand what was requested.

24 I'm inclined to view this as an area that if the
25 parties can get where they need to go on their own, I'd

1 rather not impose a top-down solution. But if there's a
2 problem, I won't hesitate. I won't say I'd be happy to get
3 involved, but I won't hesitate to get involved if I believe
4 that that process isn't working as it ought to. So that's
5 where we're at on validation protocol.

6 Is there anything further that ought to be
7 discussed at this point or should we move on to structured
8 data?

9 MR. TAYLOR: Nothing from defendants, Your Honor,
10 on that issue.

11 MS. WAGNER: Nothing for plaintiffs.

12 THE COURT: All right. So moving on to structured
13 data, then. It looked like Mr. Clark was going to speak on
14 structured data on behalf of the plaintiffs. Is that right?

15 MR. CLARK: Yes, Your Honor.

16 THE COURT: All right. Please go ahead.

17 MR. CLARK: Brian Clark for DPP but speaking for
18 all plaintiffs.

19 This category of structured data falls into the
20 bubbling-up category you mentioned earlier. So I'll kind of
21 get to what we think might be a way forward or a suggestion.
22 But we just kind of want to update you because this is one
23 of those things that does have some long-term implications,
24 and we think a discussion here is appropriate and useful.

25 I'll start off, first off, plaintiffs absolutely

1 recognize it isn't totally clear when structured data was
2 going to be produced. It happens, and that's where we're
3 at.

4 We recognize a November 4th, 2020 stipulation says
5 September 1, 2021 was a substantial completion deadline for
6 documents and structured data. But between that stipulation
7 and the January 26th, 2021 order from the Court, there were
8 lots of discussions about deadlines for production.

9 There was also the December 18th, 2020 status
10 hearing where a lot of statements and a lot of assurances
11 were made about rolling productions of documents to make the
12 schedule work.

13 And, finally, in that November 2020 stipulation it
14 didn't address class certification, and class certification
15 is really important after this gap between when we get
16 structured data and when we file for reasons I'll kind of
17 explain later.

18 I think just, finally, the January 26, 2021 order
19 did not address whether September 1 remained a deadline for
20 structured data productions or just documents.

21 We have spent many months since November talking
22 about structured data and what types of categories and
23 fields would be produced, and there is agreement on those
24 fields to be produced at this point. And all that's left,
25 from our perspective as plaintiffs, is to produce that data.

1 And I think just kind of the bottom line is to us it seems
2 like there's a lot of time between now and September 1st to
3 start those rolling productions.

4 And we thought that the November 4th order and
5 other orders required a meet and confer deadline for
6 structured data that did admittedly get pushed out a number
7 of times, we thought that meant we would be getting these
8 rolling productions of structured data long prior to
9 September 1st. That hasn't happened. Many conversations
10 about data samples from structured data have happened, but
11 we haven't gotten the actual productions yet. And it's
12 apparent to us now there's just not a meeting of the minds
13 if we're going to get some of that structured data before
14 September 1st or not.

15 From the class plaintiffs' perspective, a
16 five-month gap between September 1 and February 7th -- if we
17 were to get all that data on September 1 -- is not enough
18 time for our experts to clean that data; send 10, 20-page
19 letters back is how this goes, each defendant, with our
20 expert's questions; get the questions answered by the
21 defendants and some follow-ups and get to a point where the
22 regressions can be run. Five months isn't enough.

23 However, our point is in no way -- we are not
24 trying to jam defendants up here. That's not our goal, to
25 say you must get it to us next week or else. But we do

1 think we need to work something out here because of that
2 concern that we have.

3 So we think the best way possible right now is to
4 get rolling productions of that data. In particular,
5 production of sales-related information and specifically
6 invoice-level data for the sale of pork we think is
7 particularly important because, in our experience, the
8 cleaning of that data takes a lot of time to standardize
9 customer names and do many other tasks related to it.

10 So I think one of our goals is -- and we said in
11 our letter and I think defendants -- there's been some
12 discussion about rolling production and getting that
13 earlier. But the sooner we can get that and have some
14 assurance on a date certain to get that, the better from our
15 perspective in front loading that sales data.

16 And our proposal would be to set a deadline of
17 June 14th to report back to the Court on whether we have
18 this agreement on rolling productions of structured data;
19 and if we don't, a regular report back to the Court on that
20 or if there is an issue or schedule adjustment we need to
21 make, come back to you.

22 But I think the two truisms or the two essential
23 points for plaintiffs here is, number one, a five-month gap
24 between getting the data and class cert is not going to
25 work. But, number two, if we can get some rolling

1 productions in the very near future, we are really committed
2 to making February work because we are plaintiffs. It is
3 our job to advance the schedule as quickly as we can. And
4 if we can get this data soon, we can stick to that.

5 THE COURT: All right. Understood.

6 And who was going to speak for defendants on the
7 structured data?

8 MR. ROBISON: Brian Robison for Smithfield, Your
9 Honor.

10 THE COURT: So your name is Brian, and you are
11 going to be speaking to the structured data.

12 MR. ROBISON: Thank you, Your Honor.

13 I think one of the things you've heard already
14 today is that discovery in this case, objectively speaking,
15 is going really well. There's a reason the parties were
16 able to cancel the last three status conferences --
17 February, March, and April. We didn't have any disputes.
18 We didn't even have brewing disputes. We didn't have
19 anything to bring to you. And I think that's remarkable
20 considering a case of this size with this many lawyers and
21 this many parties. I think that speaks to how the parties
22 have been able to work together.

23 I don't really think there's a dispute today
24 either. I don't think there's any dispute as to what the
25 deadline is for substantial completion of data productions.

1 It's pretty clear to us. The parties agreed on this date.
2 Way back in November the parties agreed on a date. ECF-530
3 was the stipulation the parties entered that had various
4 discovery milestones and the date for each one. And the
5 date for substantial completion of documents and data was
6 September 1, 2021.

7 The next week the Court accepted all of those
8 dates and then entered a Scheduling Order under Rule 16 and
9 Local Rule 16.3 that adopted September 1 as the date. And
10 ever since then, the defendants have been prioritizing their
11 discovery tasks with their clients, their vendors, their
12 contract attorneys, however they're doing their review.
13 We've been prioritizing various steps along the way based on
14 the schedule that was entered in November.

15 And there were additional dates for class
16 certification and *Daubert* and that sort of thing entered
17 later, but that subsequent Scheduling Order did not alter
18 the date for substantial completion of data.

19 So that's been the parties' understanding ever
20 since last November. That's been our understanding, and
21 we've been relying on that date ever since.

22 And there have been rolling productions. Just
23 like I said we could do, we have done rolling production of
24 documents. That's what I said at the status conference in
25 December right before Christmas, that we would be able to

1 roll out documents, and that's what we've done.

2 Rolling productions started in March. They
3 continued in April with substantial completion of our
4 priority custodians. The DPPs also substantially completed
5 production for their priority custodians. And then
6 defendants have been rolling out documents around April,
7 May, and this week.

8 So, in our view, we're doing exactly what we're
9 supposed to be doing. We're meeting the deadlines. We're
10 doing rolling productions of documents.

11 Data is a different world. Data is an entirely
12 different animal. Each one of those defendants is organized
13 differently with different systems, back-up tapes, legacy
14 systems, different subsidiaries. So a rolling production of
15 data is a new concept the plaintiffs introduced recently.

16 We're hearing a different message today than we
17 heard when they first reached out about this. When they
18 first reached out about this, they wanted full production of
19 all data on June 15th, which was a startling turn of events
20 for us.

21 Again, we're operating on a very different
22 schedule, prioritizing what we're doing based on the
23 schedule we have in place. And the idea of accelerating our
24 data productions by 75 days simply wasn't going to work.
25 We're still in the process of pulling data. We're still

1 trying to get extracts. Once we get the data extracted, we
2 have to check it, make sure our clients really pulled what
3 we needed to pull.

4 Some of these clients don't really host their own
5 data. It's hosted by third parties. So we're working with
6 third parties to extract the data that we really need.

7 So when they first came to us and started to
8 explain that they think they're going to be in a squeeze --
9 that they're going to be squeezed by the September 1 date of
10 the substantial completion of data and the February 7 date
11 they chose for their class briefs and class expert reports
12 when they first came to us, their solution for the squeeze
13 was to put a huge burden on us, ask us to produce data 75
14 days early, which would be 11 days from now, and we said
15 we're not going to be able to do that.

16 Several defendants did say they would be able to
17 do rolling productions. Some are not probably going to be
18 able to just because the way their systems, again, are
19 oriented. So we're not sure there is a one-size-fits-all
20 answer here. Some said they could. Some said they
21 couldn't. Some were still considering it.

22 So, again, the defendants were willing to talk
23 about things, but we couldn't commit to June 15th for
24 producing all the data or even substantial completion of
25 data because, again, we've been operating under the idea

1 that we had until September 1.

2 So to us we don't have a discovery dispute. There
3 is no confusion over the dates in the Court's orders. To us
4 what it looks like is the plaintiffs want to change the
5 order. They want to have a new date for data to solve their
6 squeeze that they think they're going to have between
7 September 1 and February 7.

8 To us we're not sure they're going to be in a
9 squeeze because, again, there will be some rolling
10 productions of data. But to us if there is a squeeze, if
11 they're not going to have enough time between September 1
12 and February 7, to us the solution is not put massive
13 burdens on the other side of the case. Don't put burdens on
14 the side that was not involved in choosing February 7th as
15 the class date. Let's move the class date back 30, 60, 75
16 days, whatever they think their experts are going to need to
17 do the analysis they need.

18 So that's our position. We're not trying to be
19 difficult. We're trying to get documents and data out
20 quickly. We're mindful of the Court's schedule.

21 We are going to meet, as far as we know, barring
22 any bizarre technical problems -- every defendant is
23 committed to meeting the September 1 date for substantial
24 completion of documents and data. We're just saying if
25 there is a problem in the schedule the plaintiffs requested,

1 then the solution should not be to burden us. The solution
2 should be to bump back the class cert briefings and
3 deadlines.

4 THE COURT: Well, let's think about a few of these
5 things. One is, you know, of course, I don't know what the
6 initial ask from the plaintiffs was, but certainly what I'm
7 hearing today is that it's going to -- that it's always been
8 understood that one way or another discovery productions
9 would be rolling so that nobody ever contemplated that
10 nothing would be produced until September 1st, but you were
11 all cool as long as it all got produced by September 1st.
12 So you've all been working on a rolling basis.

13 And it's been clear certainly -- I think it's been
14 implicit in all of the discussions we've had that there
15 would be -- that nobody was going to be sort of back-end
16 loading productions, and that the parties were going to talk
17 with each other about prioritizing to the extent that they
18 could. In other words, if one party needed certain
19 information of one type sooner than something else to let
20 the other party know that and see whether that could be
21 taken into account in the rolling productions.

22 At the same time, it sounds -- there was no
23 interim date set for beginning the production or for being
24 so far down the line on a particular kind of information.
25 And with 20/20 hindsight maybe that's something that should

1 have been surfaced.

2 But what we have at this point is the plaintiffs
3 now recognizing that it's going to take a certain amount of
4 time to deal with the data they get and if they don't get it
5 until the last date, there's going to be a challenge in
6 making the class certification motion deadline.

7 Yes, one answer is to push that deadline back, but
8 I'd rather not do that, and Judge Tunheim would rather not
9 do that. So I don't want that to be the easy answer if
10 there's another way to sort this out.

11 What I think I'm hearing from the plaintiffs at
12 this point is we've identified this concern. Let's talk
13 about it. Let's find out what it's going to take. Is
14 rolling production of structured data an option? If it's an
15 option, could we prioritize this over that? Maybe it's
16 going to involve -- I don't know, maybe it involves having
17 to shift some resources, to reorder things that are
18 currently in the works.

19 I don't hear them asking any longer for, okay, we
20 want it ten days from now. But I do hear an ask for a
21 conversation soon to explore what can be done and what could
22 be agreed to and what the cost of that in terms of having to
23 potentially reorder other things or the plaintiffs
24 potentially having to take something else later in order to
25 get this sooner. It strikes me that all of that potentially

1 is a topic of conversation.

2 Do you have any objection, Mr. Robison, to -- and
3 I can poll the other defendants' counsel as well. I realize
4 you are only in a position ultimately to talk to your one
5 set of clients, but do you have any objection to setting a
6 fairly short target date by which these conversations will
7 have happened and you'll have fully explored what can be
8 done to address the plaintiffs' ask and what the trade-offs
9 might be for doing it and what are the options that maybe
10 don't involve having to push back the deadline for the class
11 certification motion?

12 MR. ROBISON: Your Honor, definitely for
13 Smithfield we're not opposed to getting into the
14 conversation you're talking about where there may be a lot
15 of moving parts. And I don't think other defendants would
16 be opposed to having the conversation.

17 I don't know where the conversation will come out
18 just because there are different defendants with different
19 systems and different hurdles to producing even sales data.

20 My client, for example, has multiple different
21 databases with multiple different date ranges and systems,
22 so it's a complicated discussion no matter what.

23 There will be a lot of moving parts. There may be
24 things that we have to shuffle and the plaintiffs would,
25 like you say, get later than they would otherwise. But

1 having a conversation, no. There's certainly no objection
2 to having a conversation.

3 THE COURT: And it also strikes me but if there
4 are some defendants who can move up or begin a sooner rather
5 than later rolling production of structured data, that in
6 itself -- I mean, that even and of itself gets some
7 information in the plaintiffs' hands, rather than all
8 information from all defendants coming in really close to
9 that September 1 deadline. So the answer may be a
10 combination of all of the above.

11 But the request I would have for you is that you
12 have that conversation and you look at the possibilities and
13 get me a letter that tells me where you're at and whether
14 you've been able to reach some agreements among some or all
15 of you about how to address this and whether in light of
16 those it looks like we can stick to the ultimate deadline
17 we're looking at, which is the class cert -- the deadline
18 for the motion for class certification or whether given
19 where we're at we may need to look at something different
20 there.

21 I don't want to make that easy. In other words, I
22 don't want to make it the easy fix to push back the class
23 cert deadline. But I realize that we're dealing with a lot
24 of different realities here. And I've been in other cases
25 where structured data turned out to be -- it was a bear to

1 be wrestled with. And I know that can take some time.

2 MR. ROBISON: Yep.

3 THE COURT: So Mr. Clark had proposed a June 14
4 date, which is ten days from now, but it's a week from
5 Monday. Is that realistic?

6 MR. ROBISON: Could we make it Friday, the 18th?

7 THE COURT: If there's a better chance of having
8 to work some things out that will solve these issues, then
9 I'm fine with making it the 18th.

10 MR. ROBISON: I'm out all of next week for
11 vacation. So if we can make it a few days after the 14th,
12 that just gives me more time to be involved for our client.
13 I don't know what other people's schedules are, but Friday
14 the 18th would work for me.

15 THE COURT: Any defense counsel who couldn't
16 commit to a conversational timeline that we could get a
17 letter to me by the 18th? Nope.

18 All right. All right. So I will look for one or
19 more letters by the 18th. I want them to be joint, but if
20 they are bilateral, that's okay, too. In other words, it's
21 possible that the most efficient way to get me that
22 information is on a defendant-by-defendant basis and, if
23 so -- I still want it to be joint plaintiff-defendant, but I
24 won't impose on you the obligation of trying to come up with
25 one letter that speaks for all of the defendants if that's

1 helpful.

2 MR. ROBISON: Sure.

3 THE COURT: All right. Anything else on
4 structured data?

5 MR. ROBISON: Not from the defendants.

6 THE COURT: All right. Thank you.

7 Otherwise, the last was sort of a catch-all update
8 on meet and confers with regard to discovery issues
9 generally. Certainly my take-away from your respective
10 letters was that you're feeling pretty good about your
11 ability to work through disputes so far.

12 So any additional ornaments you want to hang on
13 that tree?

14 MS. WAGNER: I'm Arielle Wagner. Plaintiffs don't
15 have any other specific discovery issues we want to address
16 at this time. As you said, everything is moving forward and
17 we're largely on track.

18 THE COURT: Anything for the defendants?

19 MR. ROBISON: I don't think so, Your Honor.

20 THE COURT: All right. Now, I forgot to look at
21 when our next -- anybody have handy the date of our next
22 conference? I should've looked that up. No? Nobody has
23 it? Do we not have it? Do we not have another conference
24 scheduled? If so, we probably -- we don't have another one
25 scheduled?

1 MR. ROBISON: I don't think so.

2 THE COURT: Then we ought to do that. Let me ask
3 for suggestions about how far out we should be looking at a
4 next conference.

5 MR. CLARK: Your Honor, Brian Clark for
6 plaintiffs.

7 I do think maybe towards the end of that week
8 after the 4th of July or even the beginning of that next
9 week might make some sense.

10 I do think some things will start to bubble up as
11 we get more productions and each of us identify potential
12 issues it might be useful to speak to you. So I just throw
13 out the dates of July 8th or 9th or July 12th or 13th.

14 THE COURT: All right. Hold on just a moment and
15 let me look at that. I'm, actually, going to be out of town
16 the 8th and 9th.

17 I could maybe do some -- I think I could do some
18 finagling to do a morning conference on July 15th by Zoom,
19 obviously. Generally speaking, anybody that you just know
20 right out of the blocks there's no way that could work?

21 MR. ROBISON: For Smithfield July 15th is fine.

22 MR. CLARK: Same for plaintiffs, Your Honor.

23 THE COURT: All right. Then we'll plan on July
24 15th. I'll have to move some things around, so I don't know
25 right now whether we'll do 9:00 or 9:30 or 10:00. It won't

1 be -- we won't start any later than 10:00 Central Time. I
2 may start earlier depending on what I can move around on my
3 schedule. But that's when we'll schedule the next one.

4 I'll get an order out that sets that date and time
5 formally, and I'll also include deadlines for submissions in
6 advance.

7 And maybe one of the things you all could talk
8 about as you're planning the agenda for that conference
9 would be whether you want to propose at that point that we
10 get regularly-scheduled conferences on the calendar, just go
11 ahead and prophylactically schedule them or continue to do
12 them on an ad hoc basis. I'm open to either one, but if it
13 helps your planning to get them on the calendar on a more
14 regular basis, I'm happy to do that. So why don't you plan
15 to make that one of your conversation starters when you
16 start thinking about the agenda for the next conference.

17 All right. Anything else that ought to be on my
18 radar at this point on behalf of the plaintiffs?

19 MR. CLARK: No, Your Honor.

20 THE COURT: On behalf of the defendants?

21 MR. ROBISON: No, Your Honor.

22 THE COURT: All right. Thank you very much, and I
23 will see you in the middle of July. Have a good weekend,
24 everybody.

25 (Court adjourned at 1:53 p.m.)

* * *

I, Debra Beauvais, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: s/Debra Beauvais
Debra Beauvais, RPR-CRR